

or subtract from the area affected by putting up or taking down lamp-posts. That lamp-posts and direction are both questions of fact. This ingenious argument (as to the soundness of which I reserve my opinion until necessary) lets in the argument that if the direction is a fact it must be proved, which it was not.

For this reason the appeal must be allowed and the convictions quashed.

Appeal allowed.

LIM PENG KOI v. REX.

[App. Crim. Juris. (Murray-Aynsley, C. J.)
March 6, 1951]

[Singapore — Magistrate's Appeal No. 101 of 1950]

Evidence Ordinance s. 33 — When evidence taken in a judicial proceedings can be used in a subsequent judicial proceedings — Delay and expense which the Court consider unreasonable.

In this case the appellant had been convicted and sentenced to six months rigorous imprisonment. The only evidence of the crucial facts in issue was given at a prior judicial proceedings which the prosecution sought to use under section 33 of the Evidence Ordinance. This evidence was strongly challenged by the defence. When the evidence was originally taken certain matters which should not have been admitted were let in. The trial was begun again before another District Judge and the evidence then put in under the provisions of section 33 of the Evidence Ordinance was not the evidence originally given but an expurgated version compiled by the Police Officer and Counsel who at that stage represented the appellant.

Held, (1) that in determining when the delay and expense is unreasonable under section 33 of the Evidence Ordinance the Court must take into consideration the seriousness of the charge, whether it is one for which the accused is likely to be sentenced to imprisonment or not, and the character of the evidence whether the evidence is challenged by the defence or is of a purely formal character; (2) that in this case the trial is not satisfactory and therefore there must be a new trial.

MAGISTRATE'S APPEAL.

M. B. Brash for the appellant.

A. V. Winslow (D.P.P.) for the Crown.

Murray-Aynsley, C.J.: — This case raised a question as to the application of section 33 of the Evidence Ordinance. The section reads as follows:—

"33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case the Court considers unreasonable:

Provided

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding."

Here we have to consider the meaning of the words "without an amount of . . . expense which under the circumstances of the case the Court considers unreasonable". To determine when the expense is unreasonable is not a matter in which absolute standards can be applied. In particular two things are of importance; the seriousness of the charge and the character of the evidence. On the first point, in particular, it should be regarded as a very serious matter to allow evidence given on another occasion to be read when a person is charged with an offence for which he is likely to be sentenced to imprisonment. On the second it may be that the evidence given is not challenged by the defence and it may be evidence of a purely formal character.

In the present case the appellant was convicted and sentenced to six months rigorous imprisonment. The evidence was also the only evidence of the crucial facts in issue and it was very strongly challenged by the defence. A further difficulty arose from the fact that when the evidence was originally given certain matters which should not have been admitted were let in. The trial was begun again before another District Judge and the evidence then put in under the provisions of the section in question was not the evidence as originally given but an expurgated version compiled by the Police Officer and counsel who at that stage represented the appellant. I do not see that there is any legal justification for this proceeding, but by itself it might not in the circumstances be of sufficient importance to justify quashing the conviction. Although at the time no objection was taken by the gentlemen who then represented the appellant, I cannot consider the trial as satisfactory and I, therefore, ordered a new trial.

Retrial ordered.

MUHAEMED ABDUL RAHMAN v. REX.

[App. Crim. Juris. (Murray-Aynsley, C. J.)
March 7, 1951]

[Singapore — Magistrate's Appeal No. 158 of 1950]

Price Control Ordinance (No. 6 of 1950), s. 9 — "Business in the course of which price-regulated goods are normally sold" — Meaning of.

The words "business in the course of which price-regulated goods are normally sold" mean that price-regulated goods are normally sold in that particular business, not in similar business.